



of fill material into waters of the United States associated with the Spruce No. 1 mine located in Logan County, West Virginia. (the "Spruce No. 1 Permit").

2. By letter dated September 3, 2009, EPA requested the District Engineer for the Corps' Huntington District to exercise his discretionary authority under 33 C.F.R. § 325.7 to suspend, revoke or modify the permit. In the letter, EPA asserted that new information and circumstances had arisen since the issuance of the permit in January, 2007, which justified reconsideration of the permit decision. On September 4, 2009, the United States moved this Court to stay the proceedings regarding the Spruce No. 1 permit in order to provide the Corps an opportunity to determine whether the information provided by EPA warranted the exercise of its discretionary authority to suspend, modify or revoke the permit. Doc. No. 459. By Order dated September 15, 2009, this Court granted the United States' motion. Doc. No. 461.

3. By letter dated September 30, 2009, the District Engineer for the Huntington District of the Corps responded to EPA's request, and advised that he had determined not to exercise his discretionary authority to suspend, modify or revoke the Spruce No. 1 Permit. On October 5, 2009, the United States moved this Court to extend the stay of proceedings regarding the Spruce No. 1 Permit for an additional thirty days in order to provide EPA an opportunity to consider whether to exercise its authority under CWA § 404(c) to prohibit discharges into waters of the United States as authorized by the Spruce No. 1 Permit. Doc. No. 463. By Order dated October 21, 2009, this Court granted the United States' Motion. Doc. No. 466.

4. By letter dated October 16, 2009, EPA formally initiated the administrative process to exercise its Section 404(c) authority by notifying the Corps that, pursuant to 40 C.F.R. § 231.3(a), it intended to issue a public notice of a proposed determination to restrict or prohibit

the discharge of dredged or fill material at the Spruce No. 1 Mine project site consistent with EPA's authority under Section 404(c) of the Clean Water Act. In accordance with EPA regulations, 40 C.F.R. § 231.3(a)(2), that letter initiated a 15-day period for the recipients of the letter to demonstrate that no unacceptable adverse effects will occur, or that corrective action will be taken to prevent unacceptable adverse effects. During that initial 15-day period, EPA, the Corps, and Mingo Logan met to discuss options for further reducing adverse environmental impacts associated with the Spruce No. 1 Permit. EPA and Mingo Logan agreed to continue their discussions regarding EPA's concerns. EPA granted a 15-day extension of the period described in 40 C.F.R. § 231.3(a)(2) for Mingo Logan to provide additional information pertinent to EPA's evaluation of the Spruce No. 1 Permit. Accordingly, the United States filed an unopposed motion to extend the stay issued by this Court for an additional 30 days, until December 4, 2009. Doc. No. 467. The Motion was granted by Order of this Court dated November 5, 2009. Doc. No. 468. On December 4, 2009, the United States filed another unopposed motion to extend the stay issued by this Court for an additional 30 days, until January 4, 2010. Doc. No. 469. The Motion was granted by Order of this Court dated December 7, 2009. Doc. No. 471. On January 4, 2010, the United States filed another unopposed motion to extend the stay issued by this Court for an additional 60 days, until March 5, 2010. Doc. No. 472. The Motion was granted by Order of this Court dated January 5, 2010. Doc. No. 473.

5. During the stay period, EPA and Mingo Logan had additional discussions regarding options for further reducing adverse environmental impacts associated with the Spruce No. 1 Permit. Notwithstanding those efforts, EPA and Mingo Logan were unable to reach an agreement that would resolve EPA's concern that the project could have unacceptable adverse

effects. Accordingly, on March 5, 2010, the United States moved to extend the stay issued by this Court for an additional three weeks, until March 26, 2010, to allow the EPA to make a determination regarding whether to proceed to the next step in the pending administrative process to veto the permit, in light of EPA's continuing concerns about the environmental impacts associated with this permit. Doc. No. 474. The Motion was granted by Order of this Court dated March 18, 2010. Doc. No. 480.

6. On March 26, 2010, the Regional Administrator of EPA Region III signed a Public Notice, proposing to withdraw or restrict specification of certain waters as disposal sites for the discharge of dredged or fill material for the construction of the Spruce No. 1 Mine as currently authorized by DA Permit No. 199800436-3 (the Spruce No. 1 Permit). On the same date, the United States filed with this Court a motion seeking an extension of the stay pending the outcome of the administrative process. A copy of the proposed determination was submitted to the Court as an exhibit to that motion. By Order dated April 22, 2010 (dkt. # 486), this Court granted the motion and extended the stay of proceedings for as long as required for EPA to complete its administrative process or for a period of six months, until October 22, 2010, whichever is shorter.

7. As reported in the United States' Status Report Regarding EPA's Section 404(c) Review of the Mingo Logan Coal Company's Spruce No. 1 Permit, filed October 4, 2010 (dkt. # 493), EPA has made substantial progress during the period of the stay that has been in place. EPA's proposed determination was posted on its website at <http://www.epa.gov/region03/mtnmop/spruce1documents.html> on March 26, 2010, and was published in the Federal Register on April 2, 2010. 75 Fed. Reg. 16,788-808. EPA accepted

comments for a period of 60 days following publication of the proposed determination in the Federal Register. EPA also convened a public hearing May 18, 2010. The Notice of the Public Hearing was published in the Federal Register on May 4, 2010. 75 Fed. Reg. 23,760-61. During the comment period, EPA Region III received more than 50,000 comments, both supporting and opposing the Proposed Determination.

8. On September 24, 2010, the Regional Administrator for EPA Region III forwarded his recommended determination for review by the EPA Assistant Administrator for Water. (The authority for review of section 404(c) recommended determinations has been delegated by the EPA Administrator to the Assistant Administrator for Water.) EPA Headquarters received the recommended determination on September 28, 2010. A copy of that recommended determination is attached hereto.

9. EPA's regulations provide for consultation with the Chief of Engineers and the project proponent and, where applicable, the State, before the Administrator makes a final determination. 40 C.F.R. § 231.6.

10. Although substantial progress has been made in the administrative process during the period of the stay of this proceeding, the process will not be completed prior to the expiration of the stay on October 22, 2010. EPA anticipates that it will be prepared to issue a final determination within 120 days of that date.

11. The United States respectfully requests that the stay of proceedings regarding the Spruce No. 1 Permit be extended for an additional 120 days, to allow time for the completion of EPA's administrative process. The requested stay would defer any further briefing and disposition of the Mingo Logan motion for summary judgment regarding the Spruce No. 1 Permit and any other

proceedings that would have the potential to interfere with the exercise of EPA's statutory authority.

12. A stay of these proceedings will serve the interests of judicial economy because EPA's administrative process may result in prohibition of the discharge authorized by the Spruce No. 1 Permit or revisions to that permit. Accordingly, there is no purpose to be served by further adjudicating the validity of the permit at this time.

13. A stay of these proceedings would not prejudice Intervenor Mingo Logan because the stay will not affect its current operations as authorized by Mingo Logan's agreement to restrict the scope of its mining operations. In the event circumstances change during the stay period, Mingo Logan may move this court to lift the stay for the purpose of seeking further relief.

14. Similarly, the stay would not prejudice Plaintiffs, as it will not preclude Plaintiffs from filing a motion to lift the stay in order to seek further relief from the Court.

15. Plaintiffs do not oppose this motion. Intervenor Mingo Logan Coal Company does oppose this motion.

DATED: October 15, 2010

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

_____	)	
OHIO VALLEY ENVIRONMENTAL	)	
COALITION, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action Nos. 3:05-cv-0784
	)	3:06-cv-0438
UNITED STATES ARMY CORPS OF	)	
ENGINEERS, et al.,	)	
	)	
Defendants,	)	
	)	
ARACOMA COAL COMPANY, et. al.,	)	
Intervenor-Defendants.	)	
_____	)	

**[PROPOSED] ORDER**

Pending before the Court is the United States' Motion to Extend the Stay of Proceedings Regarding the Mingo Logan Coal Company's Spruce No. 1 Permit For An Additional 120 Days (until February 22, 2011). For reasons apparent to the Court, the Court GRANTS the motion.

All proceedings regarding the Spruce No. 1 Permit will be stayed until February 22, 2011, or until EPA issues a Final Determination, whichever occurs first. This Order does not preclude any party from filing a motion to lift the stay in order to seek further relief from the Court.

The Court DIRECTS the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTERED: October \_\_, 2010

\_\_\_\_\_  
ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

OHIO VALLEY ENVIRONMENTAL  
COALITION, et al.,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF  
ENGINEERS, et al.,

Defendants.

Civil Action Nos. 3:05-cv-0784  
3:06-cv-0438

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of October, 2010, I electronically filed the foregoing "Motion to Extend the Stay of Proceedings Regarding Mingo Logan Coal Company's Spruce No. 1 Permit For An Additional 120 Days" and [Proposed] Order with the Clerk of the Court using the CM/EMF system which will send notification to the following:

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